



Paper No. 6

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DEC 10 2001

OFFICE OF PETITIONS

In re Application of  
Frank W. Kotzur et al.  
Application No. 09/853,862  
Filed: May 14, 2001  
For: Machine for Boxing Wound Coils of  
Filamentary Material

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: **DECISION REFUSING STATUS**  
: **UNDER 37 CFR 1.47(a)**  
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This is in response to the petition under 37 CFR 1.47(a), filed November 5, 2001 and supplemented on November 29, 2001..

The petition is dismissed.

Rule 47 applicant is given **TWO (2) MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 1.47(a)," and should only address the deficiencies noted below. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a). The reply to this decision may include an oath or declaration executed by the non-signing inventor in compliance with 37 CFR 1.63.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor. Applicant lacks item, (1) and (2) set forth above.

As to item (1), Rule 47 applicant failed to show or provide proof that the nonsigning inventor has refused to sign the declaration. Before an inventor can refuse to sign an oath or declaration, a complete copy of the application papers (specification claims, drawings, and oath or declaration) must have been presented. While the evidence submitted shows that only the declaration and power of attorney, and assignment were forwarded to the nonsigning inventor, no evidence has been submitted to show that a complete copy of the application papers was in fact mailed and/or received by the nonsigning inventor. Did the inventor receive a complete copy of the application ?

Unless a nonsigning inventor(s) was presented with a copy of the application papers, the nonsigning inventor(s) could not attest that he has "reviewed and understands the application papers" and therefore could not comply with the request to sign the declaration. Accordingly, Rule 47 applicant failed to show or provide proof that inventor David B. Franklin has refused to sign the declaration after having been presented with the application papers. Petitioner should show that a complete copy of the application papers was presented to the nonsigning inventor, but that no response was received to the request to sign the oath/declaration or that a refusal was made and delivery of the application papers was not accepted in order to show that the inventor has refused to join in the application. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as certified mail return receipt, cover letter of instructions, telegram, etc. See Manual of Patent Examining Procedure (MPEP), Section 409.03(d).

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made is not acceptable. Additionally, when there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. On the other hand, if the refusal is in writing, a copy of the document evidencing that refusal must be made part of the affidavit or declaration. See MPEP Section 409.03(d).

As to item (2), the declaration filed with the instant petition is not acceptable in that it does not identify the application number for the above-identified application. In addition, the modified copy filed by facsimile transmission on November 29, 2001 listing the correct application number, also cannot be accepted, but will be placed in the PTO file record. Accordingly, a new declaration pursuant to 37 CFR 1.63 listing the correct application number and signed by all of the available joint inventors on behalf of the nonsigning inventor is required.

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to consider submitting the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Latrice Bond.

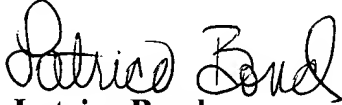
Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Office of Petitions  
Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX:                   (703) 308-6916  
Attn: Office of Petitions

By hand:           Office of Petitions  
                      Crystal Plaza Four, Suite 3C23  
                      2201 South Clark Place  
                      Arlington, VA 22202

Telephone inquiries related to this decision should be directed to Latrice Bond at (703) 308-6911.



Latrice Bond  
Paralegal Specialist  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy



Frances Hicks  
Lead Petitions Examiner  
Office of Petitions  
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